

E. The Reagan Model

President Reagan entered office with a strong commitment to cabinet government. His principal advisors on national security affairs were to be the Secretaries of State and Defense, and to a lesser extent the Director of Central Intelligence. The position of the National Security Advisor was initially downgraded in both status and access to the President. Over the next six years, five different people held that position.

The Administration's first National Security Advisor, Richard Allen, reported to the President through the senior White House staff. Consequently, the NSC staff assumed a reduced role. Mr. Allen believed that the Secretary of State had primacy in the field of foreign policy. He viewed the job of the National Security Advisor as that of a policy coordinator.

President Reagan initially declared that the National Security Council would be the principal forum for consideration of national security issues. To support the work of the Council, President Reagan established an interagency committee system headed by three Senior Interagency Groups (or "SIGs"), one each for foreign policy, defense policy, and intelligence. They were chaired by the Secretary of State, the Secretary of Defense, and the Director of Central Intelligence, respectively.

Over time, the Administration's original conception of the role of the National Security Advisor changed. William Clark, who succeeded Richard Allen in 1982, was a long-time associate of the President and dealt directly with him. Robert McFarlane, who replaced Judge Clark in 1983, although personally less close to the President, continued to have direct access to him. The same was true for VADM John Poin Dexter, who was appointed to the position in December, 1985.

President Reagan appointed several additional members to his National Security Council and allowed staff attendance at meetings. The resultant size of the meetings led the President to turn increasingly to a smaller group (called the National Security Planning Group or "NSPG"). Attendance at its meetings was more restricted but included the statutory principals of the NSC. The NSPG was supported by the SIGs, and new SIGs were occasionally created

to deal with particular issues. These were frequently chaired by the National Security Advisor. But generally the SIGs and many of their subsidiary groups (called Interagency Groups or "IGs") fell into disuse.

As a supplement to the normal NSC process, the Reagan Administration adopted comprehensive procedures for covert actions. These are contained in a classified document, NSDD-159, establishing the process for deciding, implementing, monitoring, and reviewing covert activities.

F. The Problem of Covert Operations

Covert activities place a great strain on the process of decision in a free society. Disclosure of even the existence of the operation could threaten its effectiveness and risk embarrassment to the Government. As a result, there is strong pressure to withhold information, to limit knowledge of the operation to a minimum number of people.

These pressures come into play with great force when covert activities are undertaken in an effort to obtain the release of U.S. citizens held hostage abroad. Because of the legitimate human concern all Presidents have felt over the fate of such hostages, our national pride as a powerful country with a tradition of protecting its citizens abroad, and the great attention paid by the news media to hostage situations, the pressures on any President to take action to free hostages are enormous. Frequently to be effective, this action must necessarily be covert. Disclosure would directly threaten the lives of the hostages as well as those willing to contemplate their release.

Since covert arms sales to Iran played such a central role in the creation of this Board, it has focused its attention in large measure on the role of the NSC staff where covert activity is involved. This is not to denigrate, however, the importance of other decisions taken by the government. In those areas as well the National Security Council and its staff play a critical role. But in many respects the best test of a system is its performance under stress. The conditions of greatest stress are often found in the crucible of covert activities.

his access to the President. He told Mr. Ghorbanifar stories of conversations with the President which were wholly fanciful. He suggested without authority a shift in U.S. policy adverse to Iraq in general and Saddam Husain in particular. Finally, in the nine-point agenda discussed on October 26-28, he committed the United States, without authorization, to a position contrary to well established U.S. policy on the prisoners held by Kuwait.

The conduct of the negotiators with Mr. Ghorbanifar and the second channel were handled in a way that revealed obvious inexperience. The discussions were too casual for dealings with intermediaries to a regime so hostile to U.S. interests. The U.S. hand was repeatedly tipped and unskillfully played. The arrangements failed to guarantee that the U.S. obtained its hostages in exchange for the arms. Repeatedly, LtCol North permitted arms to be delivered without the release of a single captive.

The implementation of the initiative was never subjected to a rigorous review. LtCol North appears to have kept VADM Poindexter fully informed of his activities. In addition, VADM Poindexter, LtCol North, and the CIA officials involved apparently apprised Director Casey of many of the operational details. But LtCol North and his operation functioned largely outside the orbit of the U.S. Government. Their activities were not subject to critical reviews of any kind.

After the initial hostage release in September, 1985, it was over 10 months before another hostage was released. This despite recurring promises of the release of all the hostages and four intervening arms shipments. Beginning with the November shipment, the United States increasingly took over the operation of the initiative. In January, 1986, it decided to transfer arms directly to Iran.

Any of these developments could have served as a useful occasion for a systematic reconsideration of the initiative. Indeed, at least one of the schemes contained a provision for reconsideration if the initial assumptions proved to be invalid. They did, but the reconsideration never took place. It was the responsibility of the National Security Advisor and the responsible officers on the NSC staff to call for such a review. But they were too involved in the initiative both as advocates and as implementors. This

made it less likely that they would initiate the kind of review and reconsideration that should have been undertaken.

NSC Staff Support for the Contras.—As already noted, the NSC activities in support of the Contras and its role in the Iran initiative were of a piece. In the former, there was an added element of LtCol North's intervention in the customs investigation of the crash of the SAT aircraft. Here, too, selected CIA officials reported directly to LtCol North. The limited evidence before the Board suggested that the activities in support of the Contras involved unprofessionalism much like that in the Iran operation.

iv. Congress Was Never Notified.—Congress was not apprised either of the Iran initiative or of the NSC staff's activities in support of the Contras.

In the case of Iran, because release of the hostages was expected within a short time after the delivery of equipment, and because public disclosure could have destroyed the operation and perhaps endangered the hostages, it could be argued that it was justifiable to defer notification of Congress prior to the first shipment of arms to Iran. The plan apparently was to inform Congress immediately after the hostages were safely in U.S. hands. But after the first delivery failed to release all the hostages, and as one hostage release plan was replaced by another, Congress certainly should have been informed. This could have been done during a period when no specific hostage release plan was in execution. Consultation with Congress could have been useful to the President, for it might have given him some sense of how the public would react to the initiative. It also might have influenced his decision to continue to pursue it.

v. Legal Issues.—In addition to conflicting with several fundamental U.S. policies, selling arms to Iran raised far-reaching legal questions. How it dealt with these is important to an evaluation of the Iran initiative.

Arms Transfers to Iran.—It was not part of the Board's mandate to consider issues of law as they may pertain to individuals or detailed aspects of the Iran initiative. Instead, the Board focused on the legal basis for the arms transfers to Iran and how issues of law were addressed in the NSC process.

dition that the role of the NSC staff is to review, not to duplicate or replace, the work of the departments and agencies.

We recommend that no substantive change be made in the provisions of the National Security Act dealing with the structure and operation of the NSC system.

2. Senate Confirmation of the National Security Advisor. It has been suggested that the job of the National Security Advisor has become so important that its holder should be screened by the process of confirmation, and that once confirmed he should return frequently for questioning by the Congress. It is argued that this would improve the accountability of the National Security Advisor.

We hold a different view. The National Security Advisor does, and should continue, to serve only one master, and that is the President. Further, confirmation is inconsistent with the role the National Security Advisor should play. He should not decide, only advise. He should not engage in policy implementation or operations. He should serve the President, with no collateral and potentially diverting loyalties.

Confirmation would tend to institutionalize the natural tension that exists between the Secretary of State and the National Security Advisor. Questions would increasingly arise about who really speaks for the President in national security matters. Foreign governments could be confused or would be encouraged to engage in "forum shopping."

Only one of the former government officials interviewed favored Senate confirmation of the National Security Advisor. While consultation with Congress received wide support, confirmation and formal questioning were opposed. Several suggested that if the National Security Advisor were to become a position subject to confirmation, it could induce the President to turn to other internal staff or to people outside government to play that role.

We urge the Congress not to require Senate confirmation of the National Security Advisor.

3. The Interagency Process. It is the National Security Advisor who has the greatest interest in

making the national security process work, for it is this process by which the President obtains the information, background, and analysis he requires to make decisions and build support for his program. Most Presidents have set up interagency committees at both a staff and policy level to surface issues, develop options, and clarify choices. There has typically been a struggle for the chairmanships of these groups between the National Security Advisor and the NSC staff on the one hand, and the cabinet secretaries and department officials on the other.

Our review of the operation of the present system and that of other administrations where committee chairmen came from the departments has led us to the conclusion that the system generally operates better when the committees are chaired by the individual with the greatest stake in making the NSC system work.

We recommend that the National Security Advisor chair the senior-level committees of the NSC system.

4. Covert Actions. Policy formulation and implementation are usually managed by a team of experts led by policymaking generalists. Covert action requirements are no different, but there is a need to limit, sometimes severely, the number of individuals involved. The lives of many people may be at stake, as was the case in the attempt to rescue the hostages in Tehran. Premature disclosure might kill the idea in embryo, as could have been the case in the opening of relations with China. In such cases, there is a tendency to limit those involved to a small number of top officials. This practice tends to limit severely the expertise brought to bear on the problem and should be used very sparingly indeed.

The obsession with secrecy and preoccupation with leaks threaten to paralyze the government in its handling of covert operations. Unfortunately, the concern is not misplaced. The selective leak has become a principal means of waging bureaucratic warfare. Opponents of an operation kill it with a leak; supporters seek to build support through the same means.

We have witnessed over the past years a significant deterioration in the integrity of process. Rather than a means to obtain results more

satisfactory than the position of any of the individual departments, it has frequently become something to be manipulated to reach a specific outcome. The leak becomes a primary instrument in that process.

This practice is destructive of orderly governance. It can only be reversed if the most senior officials take the lead. If senior decision-makers set a clear example and demand compliance, subordinates are more likely to conform.

Most recent administrations have had carefully drawn procedures for the consideration of covert activities. The Reagan Administration established such procedures in January, 1985, then promptly ignored them in their consideration of the Iran initiative.

We recommend that each administration formulate precise procedures for restricted consideration of covert action and that, once formulated, those procedures be strictly adhered to.

5. *The Role of the CIA.* Some aspects of the Iran arms sales raised broader questions in the minds of members of the Board regarding the role of CIA. The first deals with intelligence.

The NSC staff was actively involved in the preparation of the May 20, 1985, update to the Special National Intelligence Estimate on Iran. It is a matter for concern if this involvement and the strong views of NSC staff members were allowed to influence the intelligence judgments contained in the update. It is also of concern that the update contained the hint that the United States should change its existing policy and encourage its allies to provide arms to Iran. It is critical that the line between intelligence and advocacy of a particular policy be preserved if intelligence is to retain its integrity and perform its proper function. In this instance, the CIA came close enough to the line to warrant concern.

We emphasize to both the intelligence community and policymakers the importance of maintaining the integrity and objectivity of the intelligence process.

6. *Legal Counsel.* From time to time issues with important legal ramifications will come

before the National Security Council. The Attorney General is currently a member of the Council by invitation and should be in a position to provide legal advice to the Council and the President. It is important that the Attorney General and his department be available to interagency deliberations.

The Justice Department, however, should not replace the role of counsel in the other departments. As the principal counsel on foreign affairs, the Legal Adviser to the Secretary of State should also be available to all the NSC participants.

Of all the NSC participants, it is the Assistant for National Security Affairs who seems to have had the least access to expert counsel familiar with his activities.

The Board recommends that the position of Legal Adviser to the NSC be enhanced in stature and in its role within the NSC staff.

7. *Secrecy and Congress.* There is a natural tension between the desire for secrecy and the need to consult Congress on covert operations. Presidents seem to become increasingly concerned about leaks of classified information as their administrations progress. They blame Congress disproportionately. Various cabinet officials from prior administrations indicated to the Board that they believe Congress bears no more blame than the Executive Branch.

However, the number of Members and staff involved in reviewing covert activities is large; it provides cause for concern and a convenient excuse for Presidents to avoid Congressional consultation.

We recommend that Congress consider replacing the existing Intelligence Committees of the respective Houses with a new joint committee with a restricted staff to oversee the intelligence community, patterned after the Joint Committee on Atomic Energy that existed until the mid-1970s.

8. *Privatizing National Security Policy.* Careful and limited use of people outside the U.S. Government may be very helpful in some unique cases. But this practice raises substantial questions. It can create conflict of interest problems. Private or foreign sources may have dif-

influence to get the prisoners, the hostages, back.

Again, this is not a precise recollection; but my general recollection is that this was anticipated: that it would take place over a fairly short period of time—30 to 60 days—and that that was kind of the general framework of which everybody was thinking, because they talked about us making available limited quantities of arms, then they would produce hostages as showing that they were really able to do something for us, and that we would then ship more arms if their good faith had been shown by helping us get the hostages.

It was kind of a sequence that these events would follow, along with each other.

There was also a discussion that, because of the extreme sensitivity, it was recommended that the President not inform Congress until we had gotten the hostages back. I vaguely remember there was discussion that as soon as we got the hostages, even on our planes en route to Wiesbaden, that we would notify Congress then, before it became public generally.

So, the subjects and the discussion of a finding was made at that time, that a finding would be necessary because of the way in which this was to be done, with CIA being involved in the transfer of the weapons.

This was discussed for about an hour and twenty minutes or so. I remember because I consulted back on my calendar, and I had a group waiting for me in the White House Mess that day, and I was late to that luncheon by more than an hour.

Cap and George were opposed to the idea.

I don't remember what the Vice President or Don Regan might have said. Bill Casey was very much in favor of the idea.

My own views were that it was a very close decision. I have called it since a "51-49 decision." But I felt, in the long run, that the risks that were attendant to this probably were worth the potential benefit, and the potential benefits to me were both the opening into Iran and also the assistance that would be provided in getting the hos-

tages back. . . . It was my independent judgment because nobody had talked to me about it beforehand. But it was also as a result of the discussion back and forth, and particularly Poindexter and Casey were the principal protagonists of going ahead and doing this. . . . There was a relatively thorough—I mean, it was very clear that their [Shultz's and Weinberger's] positions were that they were opposed to it, that George felt this was at odds with our policy in regard to terrorism, that it could hurt us with our allies or with friends around the world.

Cap was concerned primarily about the terrorism policy.

The rejoinder, I think by Poindexter, was that this was a special situation and that this was not at odds with our overall policy; it was an exception to the general situation.

I think what most influenced me was the idea that we would be taking—that the risks would be fairly short-term because if it did not work, we would be able to stop it; if this didn't produce results after, say, the first foray, that the thing would be stopped. There was quite a bit of discussion about that, that this would be in stages so that it could be stopped.

We knew, in retrospect, that it did not work out that way.

But that was one of the things that made it, while a close call, more acceptable, as far as I was concerned.

(*Id.* at 6-10)

The Attorney General believed that the President had an adequate understanding of the arguments for and against the project. Nobody described the operational details, apart from the arms transfers from the Defense Department to the CIA. Ghorbanifar's name was mentioned, but not Khashoggi's or other middlemen's and financiers'. The "thinness" of operational security was not raised.

The feeling was that this would not be revealed, or at least not be revealed while the hostages were still in jeopardy, and the risks to the people involved was also dis-

lieved to be able to exert influence with respect to the hostages and dealing directly with kidnappers. The President told the Board that only the latter would "make it pay" to take hostages.

The President told the Board that he had not been advised at any time during this period how the plan would be implemented. He said he thought that Israeli government officials would be involved. He assumed that the U.S. side would be on its guard against people such as Mr. McFarlane had met in London in early December. He indicated that Director Casey had not suggested to him at any time that the CIA assume operational responsibility for the initiative, nor was he advised of the downside risks if the NSC staff ran the operation. He recalls understanding at the time that he had a right to defer notice to Congress, and being concerned that any leaks would result in the death of those with whom the United States sought to deal in Iran.

VI. The United States Sells Iran 1,000 TOW Missiles.

Before the President signed the Finding of January 17, 1986, North began to lash together the CIA and Department of Defense to implement the plan he had outlined to Poindexter in December and incorporated in Poindexter's memoranda to the President in January. Before January 17, he encountered resistance. Poindexter asked him to discuss the matter with the Director of Central Intelligence. North did so on January 14. He reported that

I[n] A[ccordance] W[ith] yr direction, met w/Casey last night after W'bgr speech at Ft. McNair. Casey then tried to contact Cap but he had already departed. Casey has called urging that you convene a mtg w/ he and Cap ASAP so that we can move on. Casey's view is that Cap will continue to create roadblocks until he is told by you that the President wants this to move NOW and that Cap will have to make it work. Casey points out that we have now gone through three different methodologies in an effort to satisfy Cap's concerns and that no matter what we do there is always a new objection. As far as Casey is concerned our earlier method of having Copp deal directly with the DoD as a pur-

chasing agent was fine. He did not see any particular problem w/ making Copp an agent for the CIA in this endeavor but he is concerned that Cap will find some new objection unless he is told to proceed. Colin Powell, who sat next to me during Cap's speech asked the following questions (my answers are indicated):

Q. Does Copp deal w/ Iranians or Israelis?

A. With the Israelis.

Q. Is the intelligence a prerequisite?

A. It is probably something that can be negotiated but in any event it is not a DoD matter. It is covered in the [January 6] finding and is in fact one of the few means we have to make a long term penetration in Iran. Our ultimate objective of changing/moderating the govt. is served by this.

Q. What cost are the Israelis willing to pay for the basic TOWs?

A. They (thru Copp) have funds to pay Fair Market Value (FMV should be about \$4900-5400 ea. depending on age) and to cover the cost of transportation. They do not have enough to pay for I TOW (about \$9500 ea. or TOW II (about \$15000 ea.). We have frequently sold the Israelis weaps/materiel at FMV vice the replacement cost to the U.S. Since we have over [quantity deleted] of the basic TOW in our inventory and cannot even use it in training due to its age, we ought to look at this as an opportunity to collect on a weapon which we aren't using [location deleted] according to Koch) and will eventually have to dispose of because we cannot sell them off otherwise. (I'm told that Hughes Acft, the msgr. has an agreement w/ DoD that all normal FMS transactions will be handled as a producer sale in order to keep DoD fm undercutting the production line by selling off old stocks).

The most recent proposal (Copp as agent for the CIA and sales to the Israelis who